

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)**

POTOMAC NAVIGATION, INC.)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.:
)	
UNITED STATES MARITIME)	
ADMINISTRATION,)	
)	
Defendant.)	
_____)	

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Potomac Navigation, Inc. (“POTOMAC”), by its undersigned counsel, brings this action against Defendant United States Maritime Administration (“MARAD”), to compel compliance with the Freedom of Information Act, 5 U.S.C. §552 (“FOIA”), and in support thereof, POTOMAC alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B) and 28 U.S.C. §1331.
2. Venue is proper in this district pursuant to 28 U.S.C. §1391(e).

PARTIES

3. Plaintiff POTOMAC is a domestic entity incorporated under the laws of the State of Delaware, having a principal place of business at North Locust Point, Baltimore, Maryland, with a mailing address c/o Semmes, Bowen & Semmes, Suite 1400, 25 South Charles Street, Baltimore, Maryland 21201.

4. Defendant MARAD is an agency of the United States Government. Defendant has its principal place of business at West Building, Southeast Federal Center, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On August 18, 2008, Plaintiff sent a FOIA request to Defendant, by electronic mail seeking access to records concerning the preparation and towing of the LIBERTY SHIP ARTHUR M. HUDDALL from the James River Reserve Fleet to Greece. The specific requests were as follows:

- a. All records and documents concerning compliance with and/or the applicability of the Toxic Substance Control Act (TSCA) and the subject vessel.
- b. All records and documents concerning the presence of polychlorinated biphenyls (PCBs) on board the subject vessel.
- c. All records and documents concerning the remediation, treatment and/or disposal of PCBs from the subject vessel.
- d. All records and documents concerning TSCA exemptions and the subject vessel.
- e. All records and documents concerning any TSCA related inspection of the subject vessel.
- f. All records and documents concerning all coordination and consultation with the Environmental Protection Agency (EPA) concerning the preparation and towing of the subject vessel to a facility in Norfolk, Virginia and Greece.

6. On or about August 19, 2008, Defendant sent Plaintiff a letter acknowledging receipt of Plaintiff's FOIA request on August 18, 2008. The letter stated that a response was due by September 17, 2008 and a reference number, 08-127, was provided.

7. Pursuant to 5 U.S.C. §552(a)(6)(A)(i), Defendant's response to the request was due on or before September 17, 2008. On or before that date, Defendant was required to determine whether to comply with the request and immediately notify Plaintiff of its determination, the reasons therefore, and the right to appeal any adverse determination.

8. Defendant failed to produce records responsive to Plaintiff's August 18, 2008 FOIA request on or before September 17, 2008, or claim that such records are exempt from production under 5 U.S.C. §552(b). It also failed to notify Plaintiff of any determination whether to comply with the request, the reasons therefore, or the right to appeal any adverse determination. Defendant also failed to invoke the provisions set forth in 5 U.S.C. §552(a)(6)(B) for extending the time limit to respond to the request.

9. On October 28, 2008, Plaintiff wrote to the Defendant requesting an update to the outstanding request for records. On October 30, 2008, the Defendant replied advising that "some requests take longer than others" and the "Program Office is working on your request."

10. On November 19, 2008, Plaintiff wrote again to the Defendant advising that a total of sixty-four (64) full working days had passed without any response from the Defendant. Defendant never responded to Plaintiff's additional inquiry of November 19, 2008.

11. As of February 2, 2009, Plaintiff has received no response to its August 18, 2008 FOIA requests, nor has it received any determination whether Defendant will comply with the request, the reasons therefore, or the right to appeal any adverse determination.

12. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. §552(a)(6)(A) or extend that time limit pursuant to 5 U.S.C. §552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its August 18, 2008 FOIA request, pursuant to 5 U.S.C. §552(a)(6)(C).

13. Plaintiff has been required to expend costs and to obtain the services of legal counsel to prosecute this action.

COUNT 1
(Violation of FOIA)

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's August 18, 2008 request within the twenty (20) day time period as required by 5 U.S.C. §552(a)(6)(A)(i), and by failing to demonstrate that any withheld records responsive to this request are exempt from production.

16. Plaintiff has a statutory right to have Defendant process its FOIA request in a manner which complies with FOIA, and Defendant waived its sovereign immunity as to actions such as the instant one, brought to gain access to certain records under FOIA.

17. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

18. Plaintiff is entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to FOIA. 5 U.S.C. §552(a)(4)(E).

WHEREFORE, Plaintiff Potomac Navigation, Inc. respectfully requests that the Court:

(1) declare Defendant's failure to comply with FOIA to be unlawful;

(2) enjoin Defendant from continuing to withhold records responsive to Plaintiff's August 18, 2008 FOIA request;

(3) order Defendant to produce all responsive records not subject to claims of exemption;

(4) order Defendant to produce a *Vaughn* index of allegedly exempt records by a date certain;

(5) award Plaintiff attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E); and

(6) grant such other relief as the Court deems just and proper.

/s/

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